



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

September 3, 1998

**MEMORANDUM**

Audit Referral 98-07

**TO:** LAWRENCE M. NOBLE  
GENERAL COUNSEL

**THROUGH:** JAMES A. PEHRKON  
ACTING STAFF DIRECTOR

**FROM:** ROBERT J. COSTA  
ASSISTANT STAFF DIRECTOR  
AUDIT DIVISION

**SUBJECT:** THE MARY LANDRIEU FOR SENATE COMMITTEE, INC.-  
MATTERS REFERABLE TO THE OFFICE OF GENERAL COUNSEL

On August 21, 1998, the Commission approved the Final Audit Report on The Mary Landrieu For Senate Committee, Inc. The audit report was released to the public on August 31, 1998. Two findings are being referred to your office:

II.B. Apparent Excessive contributions

II.C. 48 Hour Notices

Should you have any questions regarding these matters, please contact Erica D. Holder or Russ Bruner at 694-1200. Workpapers are available for your review if necessary.

Attachments as stated

## **B. APPARENT EXCESSIVE CONTRIBUTIONS**

Section 441a(a)(1)(A) of Title 2 of the United States Code states that no person shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$1,000. Subsection (b)(2)(ii) of 11 CFR §110.1 explains that *with respect to any election* means that if the contribution is not designated in writing by the contributor for a particular election then the contribution applies to the next election for that Federal office after the contribution is made (emphasis added). A contribution is considered to be made (subsection (6) of this section) when the contributor relinquishes control over the contribution by delivering the contribution to the candidate, the political committee, or an agent of the committee. A mailed contribution is considered made on the date of the postmark.

Section 110.1(b)(5)(i) and (ii) of Title 11 of the Code of Federal Regulations states, in relevant part, that the treasurer of an authorized political committee may request a written redesignation of a contribution by the contributor for a different election if:

- the contribution was designated in writing for a particular election and the contribution, either on its face or when aggregated with other contributions from the same contributor for the same election, exceeds the limitation on contributions set forth in 11 CFR §110.1(b)(1);
- the contribution was designated in writing for a particular election and the contribution was made after that election and the contribution cannot be accepted under the net debts outstanding provisions of 11 CFR §110.1(b)(3);
- the contribution was not designated in writing for a particular election, and the contribution exceeds the limitation on contributions set forth in 11 CFR §110.1(b)(1); or
- the contribution was not designated in writing for a particular election, and the contribution was received after the date of an election for which there are net debts outstanding on the date the contribution is received.

Further, a contribution shall be considered to be redesignated for another election if the treasurer of the recipient authorized political committee requests that the contributor provide a written redesignation of the contribution and informs the contributor that the contributor may request the refund of the contribution as an alternative to providing a written redesignation and within sixty days from the date of the treasurer's receipt of the contribution, the contributor provides the treasurer with a written redesignation of the contribution for another election, which is signed by the contributor.

Section 110.1(k) of Title 11 of the Code of Federal Regulations states, any contribution made by more than one person, except for a contribution made by a partnership, shall include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing. Furthermore, a contribution made by more than one person that does not indicate the amount to be attributed to each contributor, the contribution shall be attributed equally to each contributor.

If a contribution to a candidate, either on its face or when aggregated with other contributions from the same contributor, exceeds the limitations on contributions set forth in 11 CFR §110.1(b) or (d), as appropriate, the treasurer may ask the contributor whether the contribution was intended to be a joint contribution by more than one person. A contribution shall be considered to be reattributed to another contributor if the treasurer of the recipient political committee asks the contributor whether the contribution is intended to be a joint contribution by more than one person, and informs the contributor that he or she may request the return of the excessive portion of the contribution if it is not intended to be a joint contribution; and within sixty days from the date of the treasurer's receipt of the contribution, the contributors provide the treasurer with a written reattribution of the contribution, which is signed by each contributor, and which indicates the amount to be attributed to each contributor if equal attribution is not intended.

Section 441a(a)(2)(A) of Title 2 of the United States Code states, that no multicandidate political committee shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$5,000.

Section 110.9(a) of Title 11 of the Code of Federal Regulations states that no candidate or political committee shall accept any contribution or make any expenditure in violation of the provisions of part 110. No officer or employee of a political committee shall accept a contribution made for the benefit or use of a candidate, or make any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures under this part 110.

The Audit staff reviewed the Committee's receipts data file, available check copies, deposit tickets, and disclosure reports relating to contributions from individuals and identified contributions from 62 individuals, which exceeded the contribution limitation by \$41,015. Of this amount, \$15,140, from 26 individuals, was excessive for the General Election; the balance (\$25,875) was excessive for the Primary Election. In 45 instances, the Committee apparently reattributed or redesignated contributions without adequate documentation.

In addition, four registered political action committees and one unregistered organization exceeded the contribution limitations by a total of \$12,000. Of this amount, \$11,000, from two PACs and one unregistered committee, was excessive for the General Election; the balance (\$1000), from two PACs, was excessive for the Primary.

A schedule of the excessive contributions was presented to the Treasurer at the exit conference. The Committee's accountant stated he would contact the contributors to obtain redesignations/retribution letters. The Committee was informed that these retribution/redesignation letters would be untimely and that refunds of the contributions would be recommended.

In the interim audit report, the Committee was requested to demonstrate that the contributions noted above were not in excess of the contribution limitation. Absent such evidence, the Committee was to refund the remaining excessive contributions and provide evidence of such funds. If sufficient funds were not available, those contributions requiring refunds would be disclosed as debts on Schedule D (Debts and Obligations) until such time as funds became available.

In response to the interim audit report, the Committee demonstrated that one contribution, totaling \$250, was not excessive.<sup>1</sup> The remaining excessive contributions, totaling \$40,765, were itemized on Schedule D (Debts and Obligations).

In addition to itemizing the excessive contributors as debts, the Committee stated that:

[the] Committee in no way purposely attempted to evade campaign contribution limits. Rather, we maintain and the record supports that the excessive contributions...were the simple result of bookkeeping errors. To support this conclusion, we note that the excessive contributions identified by the audit total \$52,765 amounting to 2% of total contributions received by the Committee.

#### **C. CONTRIBUTIONS SUBJECT TO 48 HOUR DISCLOSURE NOTICES**

Section 434(a)(6) of Title 2 of the United States Code requires that each treasurer of the principal campaign committee of a candidate shall notify the Clerk, the Secretary, or the Commission, and the Secretary of State, as appropriate, in writing, of any contribution of \$1,000 or more received by any authorized committee of such candidate after the 20th day, but more than 48 hours before, any election. This notification shall be made within 48 hours after the receipt of such contribution and shall include the name of the candidate and the office sought by the candidate, the identification of the contributor, and the date of receipt and the amount of the

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<sup>1</sup> This contribution check was made out to the ReElect Committee (for the 2002 election), but was inadvertently deposited in this Committee's bank account. On December 23, 1997, the Committee transferred funds to the ReElect Committee to compensate for the check being deposited in the wrong account.

contribution. The notification required under this paragraph shall be in addition to all other reporting requirements under this Act.

The Audit staff reviewed all contributions received by the Committee within two and twenty days of the Primary Election (September 2, 1996 to September 18, 1996) and the General Election (October 17, 1996 to November 2, 1996) to identify all contributions of \$1,000 or more. The Audit staff determined the Committee did not file the required 48 hour notice for 34 contributions, totaling \$43,500.

In addition, the Committee failed to correctly file 48 hour notices for contributions totaling \$22,000 received from both individuals and PACs. Except for one PAC, these notices either disclosed the wrong name of the contributor or contained the wrong amount.

At the exit conference, the Committee was provided with a schedule of these items. No explanation was provided by the Committee.

In the interim audit report, the Audit staff recommended the Committee submit evidence that all required 48 notices were filed or submit any written comments it believes relevant to this issue.

In its response the committee conceded it had failed to file the notices noted above. The Committee stated in relevant part:

[the] errors were inadvertent and the result of inadequate internal controls which so often plagued harried campaigns.

The error noted by the audit disclosed that the Committee failed to include in the 48 hour reports 43 contributions, totaling \$64,000. In light of total campaign contributions of \$2,541,114, we respectfully submit that the 48 hour reporting lapse while regrettable, are not material.